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Attorneys for David Stephen Donosky

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	§	
	§	
NORTHWEST SENIOR HOUSING	§	CASE NO. 22-30659 (MLV)
CORPORATION, et al.,	§	(CHAPTER 11)
	§	
DEBTORS.	§	Jointly Administered

**DAVID STEPHEN DONOSKY’S OBJECTION TO CONFIRMATION OF FIRST AMENDED DISCLOSURE STATEMENT FOR THE PLAN OF REORGANIZATION OF THE PLAN SPONSORS DATED DECEMBER 6, 2022**

Comes now David Stephen Donosky (“Donosky”), creditor and party-in-interest, and files this, his Objection to Confirmation of the First Amended Disclosure Statement for the Plan and Reorganization of the Plan Sponsors Dated December 6, 2022 (“Disclosure”) and would respectfully show the Court the following:

1. Donosky is the holder of a prepetition claim against the Debtor for brokerage services provided in the present-value amount of \$2,420,669.00. This amount does not include postpetition interest.
2. Donosky objects to confirmation of the Plan because it fails to provide adequate information regarding the assignment of the Commission Agreement to a potential purchaser.



3. Donosky objects to confirmation of the Plan because it fails to include him within Section 5.3 related to the assumption of the ground lease. Specifically, Donosky is the beneficiary of a contingent claim relating to the provision of brokerage services for the execution of the Lease between the Debtor and Landlord. As payment for his services, Donosky was granted a commission of 2.5% of base rentals for the annual rental “however and whenever paid in all events to [Landlord] pursuant to the Lease, including any and all escalations thereto.” [Exhibit A, ¶ 1: Signed Commission Agreement between Donosky and Debtor.] This agreement survives the assignment of the Lease to another party, as contemplated by the Plan. [*Id.*]

4. Section 5.3 of the Disclosure addresses the “Assumption of the Ground Lease,” wherein the ground lease will be assumed and wherein Landlord receives an Allowed Administrative Claim from the amounts due and owing from the Petition Date through the Effective Date. The disclosure does not adequately address how performance under the Commission Agreement will be resumed as required under an assignment, or whether it will be resumed at all. One result would ensure that Donosky’s contingent claim is satisfied; the other would result in his being treated as a general unsecured creditor. This confusion makes it impossible for a creditor in Donosky’s position to make an informed judgment about the plan.

WHEREFORE, David Stephen Donosky requests that the Court find that the Disclosure does not contain adequate information under the bankruptcy code nor does it make adequate provision for his claim, and grant him such other and further relief to which he may be justly entitled.

Respectfully submitted,

Cherry Petersen Landry Albert LLP

By: /s/ Craig A. Albert

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**ATTORNEY FOR DAVID STEPHEN  
DONOSKY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon all parties via electronically by the Court's PACER system on December 12, 2022.

/s/ Craig A. Albert  
Craig A. Albert

**EXHIBIT A**

**NORTHWEST LIFECARE  
COMMISSION AGREEMENT**

This Agreement made this 5th day of November, 1997, by and between STEVE DONOSKY COMPANY ("Broker") and NORTHWEST LIFECARE JOINT VENTURE, a Texas Joint Venture ("Northwest"), and its assigns.

**WITNESSETH THAT:**

WHEREAS, Broker has assisted Northwest in negotiations regarding an option agreement (the "Option Agreement") to enter into a ground lease agreement (the "Lease") with Intercity Investment Properties, Inc. ("IIP");

WHEREAS, Broker and Northwest acknowledge that inherent in the negotiations between Northwest and IIP is the expectation that the Option Agreement will be assigned by Northwest to a lessee ("Lessee") pursuant to the Option Agreement and that Lessee will assume all obligations of Northwest thereunder including the commissions the subject hereof; and

WHEREAS, Northwest and Broker anticipate that Lessee will enter into the Lease with IIP, Northwest and Broker desire to set out their agreement with regard to the brokerage commission to be received by Broker in the event the Lease is consummated,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Broker and Northwest hereby agree as follows:

1. In the event (and only in the event) that the Lease is agreed to, executed and delivered, then Northwest and its assigns shall thereupon be obligated to pay to Broker, as provided below, a cash commission ("Primary Commission") equal to two and one-half percent (2.5%) of Base Rentals (as below defined) due to IIP during the term of the Lease. "Base Rentals" shall mean the annual rental however and whenever paid in all events to IIP pursuant to the Lease, including any and all escalations thereto. The Primary Commission shall be payable contemporaneously with the payment of the Base Rental after commencement of the Lease.

2. The payment of the final installment of the Primary Commission by Northwest or its assigns shall fully satisfy all obligations to the Broker. All expenses incurred by Broker in connection with the Option Agreement, the Lease or otherwise will be the sole responsibility of Broker. Notwithstanding any other provision herein, it is expressly understood and agreed that the obligation of Northwest and its assigns to pay a commission arising out of consummation of or otherwise with respect to the option agreement and the Lease with IIP shall, in all events, be limited to the amount payable as the Primary Commission (collectively, the "Commissions"). Broker agrees that in the event of any such conflicting or additional claims for commissions with respect to the Lease, Northwest may tender the Commissions to a court of competent jurisdiction

for such court's determination as to the proper recipient of the Commissions without further obligation to Broker by Northwest.

3. The Primary Commission shall become due and payable only when, as and if the Lease is duly executed and delivered between Lessee and IIP.

4. Northwest and its assigns reserve the right, in their sole and absolute discretion and for any reason whatsoever, to accept or reject any proffered lease transaction at any time up to the execution and delivery of the pertinent documents.

5. This Agreement is expressly assignable by Northwest. In the event Lessee or other entity shall expressly assume in writing the obligations of Northwest with respect to the Commissions, Northwest shall be relieved of any obligation and responsibility with respect to the payment of the Commissions without the prior written consent of Broker. This Agreement is expressly assignable by Broker.

6. All covenants shall, to the extent relevant to such periods, survive the execution and delivery and the subsequent assignment by Northwest of the Option Agreement and the execution and delivery of the Lease by Lessee, and shall, in addition, survive the payment of all or part of the Commissions to Broker.

7. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Main, postage prepaid, registered or certified mail, or (d) prepaid telegram or telex (provided that such telegram or telex is confirmed by expedited delivery service or by mail in the manner previously described) addressed as follows:

To Broker: Steve Donosky Company  
12221 Merit, Suite 1750  
Dallas, Texas 75251

with a copy to: Louis N. Lee, III  
McCue & Lee, P.C.  
Three Lincoln Centre  
5430 LBJ Freeway, Suite 1050  
Dallas, Texas 75240

To Northwest: Northwest Lifecare Associates, Ltd.  
Attn: Alan T. Gregory  
4403 Loma Alta  
Dallas, Texas 75205  
Facsimile No.: (214) 526-0614

and

Greystone Communities, Inc.  
Attn: Michael B. Lanahan  
222 West Las Colinas Boulevard  
Suite 2100  
Irving, Texas 75039

with a copy to:

Walter H. Allen, Esq.  
McManemin & Smith  
600 North Pearl Street, Suite 1600  
Dallas, Texas 75201  
Facsimile No. (214) 953-0695

or to such other address or to the attention of such other persons as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram or telex, upon receipt.

8. Commissions shall be paid to Broker by delivery of good funds via a check or otherwise to the address of Broker specified in the preceding paragraph or such other address as hereafter shall be designated in writing by Broker.

9. This Agreement is binding upon and inures to the benefit of Northwest and Broker and their respective heirs, devisees, personal representatives, successors and assigns, including but not limited to Lessee or other entity. This Agreement shall be construed under the laws of the State of Texas, and is performable in Dallas County, Texas. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. This Agreement constitutes the entire agreement between the parties hereto and no amendment or modification hereof shall be effective unless made by agreement in writing executed by Northwest and Broker.

EXECUTED as of the date first above written.

NORTHWEST:

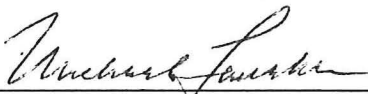
NORTHWEST LIFECARE JOINT VENTURE  
a Texas joint venture

By: Northwest Lifecare Associates, Ltd.  
a Texas corporation, Joint Venturer

By:   
Alan T. Gregory, General Partner

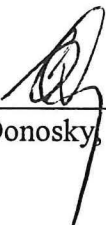
and

By: Greystone Communities, Inc.  
a Texas corporation, Joint Venturer

By:   
Michael B. Lanahan, President

BROKER:

STEVE DONOSKY COMPANY

By:   
Steve Donosky, Principal

This Agreement and the obligations hereunder with respect to the payment of the Commissions to Broker are hereby expressly accepted and assumed by the undersigned effective as of the date set forth below.

LESSEE:

\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_



**ASSIGNMENT OF GROUND LEASE OPTION AGREEMENT**

THIS ASSIGNMENT OF GROUND LEASE OPTION AGREEMENT made this 20<sup>TH</sup> day of May, 1999, by NORTHWEST LIFECARE JOINT VENTURE (hereinafter called "Assignor"), to NORTHWEST SENIOR HOUSING CORPORATION, a Texas not-for-profit corporation (hereinafter called "Assignee");

**WITNESSETH:**

Assignor, in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration paid by Assignee, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, ASSIGN, TRANSFER and SET OVER unto Assignee, the entire leasehold estate and option rights under that certain Ground Lease Option Agreement (hereinafter called the "Option") dated September 9, 1997 by and between Interlity Investments Properties, Inc. as owner/lessor and Assignor as optionee/leasee covering the property described in the Option, together with all rights, titles and options conferred thereby.

In consideration of the foregoing assignment, Assignee hereby expressly assumes and agrees to keep, perform and fulfill all of the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by Assignor under the Option.

Assignor hereby represents and warrants unto Assignee that Assignor is the owner of, and has good and marketable title to, the option/leasehold interest assigned hereby; that Assignor has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of the rights under the Option; that Assignor has not executed or granted any modifications or extensions whatsoever of the Option that the Option is valid and subsisting and in full force and effect; and that there are no defaults now existing under the Option and no event has occurred and no condition exists which with the passage of time or the giving of notice, or both, would constitute such a default.

IN WITNESS WHEREOF, this Assignment of Lease is executed as of the date first

~~above written~~  
NORTHWEST LIFECARE JOINT VENTURE  
By: Greystone Communities, Joint Venturer

By: Michael B. Lanahan  
Michael B. Lanahan, President

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To <u>Steve Donaghy</u>	From <u>ATC</u>	
Co.	Co.	
Dept.	Phone <u>214-526-2642</u>	
Fax # <u>972-333-5661</u>	Fax #	

**NORTHWEST SENIOR HOUSING CORPORATION,**  
a Texas not-for-profit corporation

By: Charles B. Brewer  
Charles B. Brewer, President

08672 00001 DALLAS 1000217.1

# FAX

**STEVE DONOSKY COMPANY**  
12221 Merit Drive, Suite 1750  
Dallas, Texas 75251-2252

Date 6/30/99  
Number of pages including cover sheet 8

**FAXED**  
7:15 PM

To: Pete Riley  
Thompson Knight

From: Steve Donosky, CCIM

Phone 214-969-1620  
Fax Phone 214-969-1751  
CC: \_\_\_\_\_

Phone 972-392-9229  
Fax Phone 972-233-5881

**REMARKS:**

Urgent     For your review     Reply ASAP     Please comment

CONFIDENTIAL - COMMISSION CASH-OUT PROPOSAL.

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TRANSMISSION VERIFICATION REPORT

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